IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

MACA.No. 794 of 2004

OPMV.1703/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI
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APPELLANT/4TH RESPONDENT

NATIONAL INSURANCE COMPANY LTD.,
REP.BY ITS ASST.MANAGER, KOCHI REGIONAL OFFICE,
T.P.CELL, M.G.ROAD, ERNAKULAM.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS: CLAIMANTS 1 TO 5 &RESPONDENTS 1 TO 3 RESPECTIVELY.
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1. ETHILAN FATHIMA, W/O. MULLANCHERI
   AHAMED KUTTY, AGED ABOUT 70 YEARS,
   RESIDING AT KALLARATHIKKAL, URANGATTIRI P.O.
2. M.ABDUL HAMEED
   S/O. MULLANCHERI AHAMED KUTTY, AGED ABOUT 43 YEARS
   DO. DO.
3. M.NAFEESA, W/O.N.C.YUNUS,
   AGED ABOUT 24 YEARS, DO. DO.
4. M.ABDUL KAREEM,
   S/O. MULLANCHERI AHAMED KUTTY, AGED ABOUT
   21 YEARS, DO. DO.
5. JAMEELATH, D/O. MULLANCHERI AHAMED KUTTY
   AGED ABOUT 19 YEARS, DO. DO.
6. KIZHAKKETHIL MOHAMMED,
   S/O. KUNHIMOHAMMED, KANNANKUMAN, KADUNGALLUR.
7. N.V.ABDULLA S/O. MOYINKUTY HAJI,
   ANGADIPURATH HOUSE, KADUNGALLOOR P.O.
8. K.P.MEHBOOB S/O. SAIDALAVI,
   KALAPARAMBIL HOUSE, URANGATTIRI P.O.

BY ADV. SRI.BABU S. NAIR
SRI.JIJO PAUL

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING COME UP FOR ADMISSION ON 18/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S. RADHAKRISHNAN & A.K. BASHEER, JJ.

M.A.C.A. No 794 of 2004

Dated: 18th September 2007

JUDGMENT

Radhakrishnan, J.

This is an appeal preferred by the Insurance Company aggrieved by the award passed by the M.A.C. Tribunal, Manjeri in O.P. (M.V) No 1703 of 1998. Above mentioned petition was disposed of along with O.P. (M.V) No 1120 of 1998 against which M.A.C.A. No 963 of 2004 is pending.

2. Accident had occurred on 5.3.1997 at about 6.30 p.m on the public road at Areacode. Vehicles involved in the accident are van KL-10/B 6650, driven by the first respondent and owned by the second respondent respectively before the Tribunal and autorickshaw KL-10/A 7530 owned and driven by the third respondent. Both the vehicles are insured with the National Insurance Company. According to the Insurance Company accident had occurred due to the negligence of the driver of the autorickshaw which came on the opposite direction and collided with the van insured with it. Further, Insurance Company has also stated that autorickshaw was overloaded and therefore the driver lost control and the

accident occurred. It is also stated that the amount awarded is on the higher side. Claimant in O.P.(M.V) No 1120 of 1998 has stated that the accident occurred due to the rashness and negligence on the part of the van driver. Tribunal after considering the oral and documentary evidence came to the conclusion that the accident occurred due to the rashness and negligence of the van driver. In paragraph 8 of the award it is stated that in a connected case, O.P.(M.V) No 1322 of 1998 it was held that the accident occurred solely due to the rash and negligent driving of the van by its driver. Van is covered by valid insurance policy.

Counsel submitted that the amount awarded is on the higher side. Deceased was aged 25 and he was the sole bread winner of the family. Mother and sister were depending on the deceased. Considering the entire facts and circumstances of the case, Tribunal awarded an amount of Rs 1,78,900/- as compensation, which, in our view, is not on the higher side. We therefore find no reason to interfere with the amount awarded by the tribunal. Appeal lacks merits and the same is dismissed.

Sd/-
K.S. RADHAKRISHNAN
Judge
Sd/-
A.K. BASHEER
Judge

18/09/2007en

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